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RESS & EMAIL

June 17, 2026

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Attention: Ritchie Murray, Acting Registrar

Dear Mr. Murray:

Re: Reply Submission on the Threshold Question by Hydro One Networks Inc. – Motion to Review and Vary the OEB's Decision and Order in EB-2025-0254 (EB-2026-0133)

We are legal counsel to Hydro One Networks Inc. ("Hydro One"), which is the moving party in the above-referenced Motion to Review and Vary the OEB's Decision and Order in EB-2025-0254. Further to the OEB's Notice of Hearing and Procedural Order No. 1 issued May 12, 2026, please find enclosed Hydro One's Reply Submission on the Threshold Question under Rule 43 of the OEB's *Rules of Practice and Procedure*. Hydro One's Reply Submission has been filed in the OEB's online filing portal and served on all parties.

Hydro One reiterates the request it made upon filing the Notice of Motion on April 8, 2026, that to mitigate potential impacts on the developer of the subject property from the delay in having a final resolution on WDI's application, the OEB should consider this Motion on an expedited basis.

Yours truly,

Jonathan Myers

/JM

cc: Kathleen Burke, Hydro One
Pasquale Catalano, Hydro One
All Parties in EB-2025-0254

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, as amended (the "OEB Act");

AND IN THE MATTER OF an Application by Wasaga Distribution Inc. for a service area amendment in respect of 400 45th Street South, Town of Wasaga Beach;

AND IN THE MATTER OF the OEB's Decision and Order dated March 19, 2026; its Decision and Order dated March 31, 2026; and its Procedural Order dated May 12, 2026;

AND IN THE MATTER OF Rules 8, 40, 42 and 43 of the Ontario Energy Board's *Rules of Practice and Procedure*.

HYDRO ONE NETWORKS INC.

Motion to Review and Vary the OEB's Decision and Order in EB-2025-0254

Reply Submission of Hydro One Networks Inc. on the Threshold Question Under Rule 43

June 17, 2026

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A. Overview

1. These submissions are filed on behalf of Hydro One Networks Inc. ("Hydro One") in reply to Wasaga Distribution Inc.'s ("WDI") June 10, 2026 submissions. The submissions address the threshold question under Rule 43.01 of the Ontario Energy Board ("OEB") *Rules of Practice and Procedure* (the "Rules") – whether Hydro One's Motion to Review and Vary raises relevant issues material enough to warrant a review of the OEB panel's March 19, 2026 Decision and Order in EB-2025-0254 (the "Decision") on the merits.[1]

2. Contrary to WDI's submissions, Hydro One is not re-arguing the case that was already before the Original Panel or asking a Review Panel to reweigh the evidence considered by the Original Panel in the Decision.[2] Hydro One raises four fundamental errors that go beyond disagreement about how the Original Panel exercised its discretion or applied particular facts.

3. As explained in its May 27, 2026 submissions, Hydro One meets the threshold test: there are four clearly identifiable errors of law, fact or mixed fact and law, that if proven, could reasonably be expected to result in a material change to the Decision, and if allowed to stand, would materially harm Hydro One.[3] WDI has not demonstrated that Hydro One has failed to satisfy the threshold question set out in Rule 43.01. Hydro One's Motion to Review and Vary, including its request for a stay of the Decision, should be granted.

B. Reply to WDI's Submissions

4. WDI characterizes Hydro One's position as rearguing issues previously canvassed in the Decision, challenging the Original Panel's weighing of the evidence and exercises of discretion, and reframing disagreements with the Decision as errors.[4]

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[1] *Rules of Practice and Procedure* (effective November 13, 2025), Rule 43.01 [Rules].
[2] EB-2025-0254, Wasaga Distribution SAA Application, Decision and Order, March 19, 2026 [Decision].
[3] EB-2026-0133, Submission of Hydro One Networks Inc. on the Threshold Question Under Rule 43, May 27, 2026.
[4] EB-2026-0133, Submission of Wasaga Distribution Inc. on the Threshold Question, June 10, 2026, p. 3 [WDI Submissions].

5. These characterizations by WDI are inaccurate and self-serving. Hydro One's motion raises clearly identifiable errors of law, fact or mixed fact and law, which are reviewable errors under the Rules.

6. WDI also alleges that Hydro One failed to establish the materiality of the errors to the Decision or to Hydro One's interests and argues that the Decision should not be stayed. WDI's arguments with respect to the errors, materiality, and stay request are addressed below.

7. WDI groups the errors into two categories, which Hydro One has maintained for purposes of this Reply: (i) the Offer to Connect ("OTC") Requirement Findings and the Opportunity to Obtain an OTC Findings; and (ii) the Incorrect Amounts Findings and Civil Costs Findings.

1. The OTC Requirement/Opportunity to Obtain an OTC Findings

8. Under section 7.5 of the Service Area Amendment Filing Requirements ("Filing Requirements"), which specifically apply to contested applications, applicants must file "(e)vidence that the customer, landowner, or developer had the opportunity to obtain an offer to connect from the applicant" and "[a]ctual copies of, as well as a summary of, the offer(s) to connect documentation", along with "a comparison of the competing offers to connect".[5] Despite this clear and prescriptive language, the Original Panel concluded that the Filing Requirements do not create a requirement that an OTC be filed in every application, only that a customer, landowner or developer has the opportunity to obtain an OTC. The Original Panel made no distinction between contested and non-contested applications in making this finding. On this basis, the Original Panel concluded that WDI's contested application met the Filing Requirements.[6]

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[5] Filing Requirements, ss. 7.5.2, 7.5.3 and 7.5.4.
[6] EB-2025-0254, Decision, March 19, 2026, p. 17.

9. WDI argues that when the Original Panel interpreted section 7.5, it was exercising its discretion to interpret the wording of section 7.5.2.[7] But what WDI describes as an exercise of discretion is really an unexplained and unjustified interpretation of the Filing Requirements.

10. The Original Panel offered no reason why it was deviating from the text of the Filing Requirements in concluding that WDI did not need to file an OTC, nor did it purport to be exercising its discretion to deviate from those requirements. Rather, this departure from the language of the Filing Requirements represents an identifiable error of law about the proper interpretation of the Filing Requirements.

11. Even if WDI is right and the Original Panel was exercising its discretion (which we do not agree with), there remains an identifiable error of law for consideration on the motion. The Supreme Court has reiterated that "administrative decision makers must remain alive to the general consistency of their decisions."[8] So while future panels are not bound by the strict requirements of *stare decisis*, they are required to strive for consistency in their decisions. When they decide to deviate from guidelines or past practice, panels must discharge "the justificatory burden of explaining that departure in its reasons."[9]

12. In finding that WDI met the Filing Requirements without filing an OTC, the Original Panel failed to discharge this burden. Not only is its departure from the Filing Requirements (as they apply to contested applications) unexplained, but the Original Panel also departed from OEB practice without justification. In EB-2014-0221, the OEB refused to process Centre Wellington Hydro's contested service area amendment application because it did not meet the Filing Requirements – Centre Wellington Hydro had not filed actual copies of OTC documentation.[10] While that application was ultimately withdrawn, this (and other contested service area

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[7] EB-2026-0133, WDI Submissions, June 10, 2026, pp. 3, 5; Filing Requirements for Service Area Amendment Applications, March 12, 2007, p. 8 [Filing Requirements].
[8] *Pepa v. Canada (Citizenship and Immigration)*, 2025 SCC 21, para 177 [*Pepa*], citing *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, para. 129 [*Vavilov*].
[9] *Pepa*, 2025 SCC 21, para 177, citing *Vavilov*, 2019 SCC 65, para. 131.
[10] EB-2014-0221, Ontario Energy Board, Acknowledgement Letter, July 8, 2014 https://www.rds.oeb.ca/CMWebDrawer/Record/442737/File/document .

amendment proceedings[11]) illustrate the OEB's historical practice of requiring that OTC documentation be filed by all parties for contested applications under section 7.5 of the Filing Requirements. If the Original Panel sought to depart from past practice, it needed to explain the departure in its reasons.

13. The OEB as an administrative tribunal "must strive to ensure that similar cases receive the same treatment."[12] The Filing Requirements ensure that the OEB has the requisite materials necessary to render reasonable decisions. The Filing Requirements also ensure that applicant and incumbent distributors have predictability in the evidentiary requirements for contested service area amendment applications. Failing to enforce these requirements, without adequate justification, risks the inconsistent application of the OEB's rules, contrary to administrative law principles.

14. In the context of a contested service area amendment application, a reasonable decision is one where, based on complete and comparable information in the form of OTCs from the applicant and the incumbent, the OEB has considered and compared the economic efficiency and customer impacts of each distributor serving the area/customer that is at issue, and approved or denied the application primarily on the basis of which distributor could serve the area/customer with the greatest economic efficiency based on the use of their existing distribution resources in the area. By not enforcing the Filing Requirements, and issuing the Decision with only the incumbent's OTC on the record, the Original Panel relied on incomplete and noncomparable information, thereby rendering its decision unreasonable.

2. The Incorrect Amounts/Civil Costs Findings

15. Hydro One's second group of identifiable errors relates to the Original Panel's failure to consider the appropriate cost information from the evidence. WDI argues that this error is an

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[11] See RP-2003-0044 (Combined Service Area Amendments Proceeding), EB-2016-0155 (E.L.K. Energy and Hydro One), and EB-2022-0234 (Hydro Ottawa and Hydro One).
[12] *Thamotharem v. Canada (Minister of Citizenship and Immigration) (F.C.A.)*, 2007 FCA 198, para 61; *Vavilov*, 2019 SCC 65, para. 129

improper challenge of the Original Panel's "exercise of judgment" and weighing of the evidence.

16. WDI mischaracterizes Hydro One's submissions. Hydro One is not asking this panel to review the Original Panel's exercise of discretion or the weight it placed on the evidence. Rather, Hydro One alleges that the Original Panel altogether ignored – or in WDI's words, "overlooked" – key evidence.[13] The OEB incorrectly relied upon WDI's interrogatory response to HONI-5(a) as a reliable and complete description of WDI's connection costs. However, HONI-5(a) was only prepared by WDI as an attempt to depict what its costs would be for connecting the Developer *using Hydro One's costing practices*, as it was asked to do in the interrogatory, and included WDI's qualification that the amounts provided in the response were a preliminary estimate *for cost comparison purposes only*.[14]

17. Most significantly, the presentation of costs in HONI-5(a) excluded $1.52M of WDI costs for civil works. While this amount was excluded to reflect *Hydro One's* practice of not imposing costs of work related to premium underground solutions on it ratepayers, the record indicated that WDI's practice is to impose such costs on its ratepayers.[15] WDI was non-committal as to whether it would charge this to the Distributor or to its ratepayers, indicating instead that it would allocate the civil costs in accordance with OEB guidance and direction[16], but no such guidance or direction was provided by the Original Panel. Instead, the Original Panel found that the civil works should not be considered in the comparison of costs, and the issue of civil works costs should be addressed in the WDI's next rebasing proceeding.[17] However, if the panel in that future proceeding determines WDI may charge those costs to its ratepayers, it would render WDI's cost to connect the Developer comparatively more costly than Hydro

[13] WDI Submissions, June 10, 2026, p. 6.
[14] EB-2025-0254, Decision, March 19, 2026, p. 15.
[15] See section 6.1.3 of WDI's Application (". . . WDI's practice is to include [in its project estimates] all costs to the developer, regardless of whether the installation is overhead or underground"), and WDI's response to HONI-1(k) ("Developers and their affiliates have completed other underground projects in WDI's service territory. In those cases, WDI included civil works (e.g. trenching, duct banks, vaults) as part of its discounted cash flow (DCF) analysis").
[16] See WDI's response to HONI-5(e).
[17] EB-2025-0254, Decision, March 19, 2026, p. 17.

One's cost to connect the Developer, but will be too late for the Original Panel to change the Decision to reflect that outcome. As such, the Original Panel's comparison of Hydro One and WDI without accounting for WDI's civil costs, without providing firm direction that WDI must charge the premium cost for undergrounding to the Developer, and deferring that issue to a future panel, was a clear error. A decision maker's misapprehension of evidence or failure to take relevant and important evidence into account is not an error in judgment, but a reviewable error.[18]

3. Failure to Establish Materiality

18. WDI argues that correcting the errors could not reasonably be expected to result in a material change to the outcome of the Decision, or material harm to Hydro One's interests.[19]

19. However, WDI's submissions misconstrue the meaning of materiality in context of the threshold test under Rule 43.01. Materiality under Rule 43.01 means that correcting the errors could result in a material change to the outcome of the Decision.[20] Hydro One has met this test:

    a) **OTC Requirement/Opportunity to Obtain an OTC Findings:**

        i. If an OTC was required and WDI did not submit one in its application, then the application should not have been considered; and

        ii. If the Original Panel had directed WDI to file an OTC, it would have enabled them to make a more informed and reasonable comparison against Hydro One's filed OTC, leading to a materially different outcome. The OEB itself acknowledged the materiality of an OTC when it stated that it would address civil works considerations "in aid of construction required from the developer," and that any such contribution "would reduce any risk of costs

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[18] *Shooters Sports Bar Inc. v. Alcohol and Gaming Commission*, 2008 CanLII 25052 (ON SCDC), para 38; *Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.*, 1997 CanLII 385 (SCC), para. 41; *Canadian National Railway Company v. British Columbia*, 2022 BCSC 2263, para. 77.
[19] EB-2026-0133, WDI Submissions, June 10, 2026, p. 7.
[20] EB-2006-0340, Decision With Reasons, May 22, 2009, p. 13

being recovered from existing customers or from Wasaga Distribution's shareholders."[21] In addition, the cost considerations set aside for a future hearing would have been brought before the Original Panel in the form of an OTC, and could have materially changed the Original Panel's analysis.

b) **Incorrect Amounts/Civil Costs Findings:** Had the Original Panel not misapprehended the evidence, it could have reasonably arrived at a different outcome. This is not a speculative error – the WDI connection was found by the Original Panel to be approximately $100,000 less costly for ratepayers when ignoring civil costs.[22] However, had the Original Panel considered the evidence showing the total capital cost of the connection that, based on WDI's practices, is likely to be levied on ratepayers, the Original Panel could have reasonably arrived at a different conclusion.

20. To counter these arguments, WDI applies a merits-based standard at the threshold stage, contending that the errors raised are "inherently speculative" and that Hydro One does not show that "the overall conclusion [of the Original Panel] would change."[23] WDI also argues that the Decision was a "holistic assessment" in which no single input was determinative. But this mischaracterizes the threshold test and attempts to insulate errors from review by characterizing them as contributing factors. At the threshold step, Hydro One is only required to show that the errors *could* reasonably be expected to result in a material change to the Decision if proven on the merits.[24] Hydro One has met this standard: remedying the errors could reasonably have impacted the Decision.

21. WDI also alleges that Hydro One failed to establish that its own interest would be materially harmed if the Decision stands – that the 660-unit residential subdivision is not material to Hydro One in the context of a business that services 1.5 million customers. In doing so, it cites

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[21] EB-2025-0254, Decision, March 19, 2026, p. 17.
[22] EB-2025-0254, Decision, March 19, 2026, p. 15, Table 1.
[23] EB-2026-0133, WDI Submissions, June 10, 2026, p. 7.
[24] Rules, (effective November 13, 2025), Rule 43.01(d).

the recent Z-factor request where the OEB found that a cost impact of $69 million was not material to Hydro One.[25]

22. WDI's reliance on the Z-factor materiality threshold is fundamentally wrong. The Z-factor is a prescribed rate-adjustment mechanism that permits a utility to recover extraordinary costs when faced with unforeseen events. It has no application to Rule 43.01, which asks whether the moving party's interests are materially harmed by a decision. Under Rule 43.01, the question is whether the harm to Hydro One warrants a full review on the merits, not whether it exceeds the utility's threshold for recovering extraordinary costs.

23. While also not directly applicable, a more analogous threshold of "materiality" is found in Chapter 2 of the OEB Filing Requirements, which sets materiality for a distributor "with a distribution base revenue requirement of more than $200 million" at $1 million.[26] Given that the proposed capital expenditures to connect the Developer would be in excess of $2 million, this clearly exceeds the materiality requirements applicable to rate applications as set out in the Chapter 2 Filing Requirements.

24. At a broader level, adjustments to Hydro One's service area, especially those with significant planned developments, are material. WDI's argument – that only the largest service area amendments would be material to Hydro One – ignores the importance of smaller subdivisions and would allow Hydro One's service area to be eroded without an opportunity for Hydro One to seek review. Qualitatively, the nature of a contested application, which is akin to an expropriation of Hydro One' service area, is such that the decision in favour of the applicant has an inherently material impact on the incumbent distributor. This is neither fair to Hydro One nor consistent with the materiality requirement under Rule 43.01.

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[25] EB-2025-0030, Decision and Order, April 7, 2026, pp. 9-10.
[26] Filing Requirements for Electricity Distribution Rate Applications, Chapter 2, December 9, 2024 (corrected May 7, 2025), p. 6.

4. The Stay Request is Appropriate

25. WDI does not articulate how Hydro One fails to meet the requirements for a stay should it meet the threshold test under Rule 43.01. As stated in paragraphs 18-19 of its May submissions, Hydro One meets the OEB's requirements for a stay under the Rules – there is a serious issue to be tried, a risk of irreparable harm if a stay is not granted, and the balance of convenience favours granting the stay.[27]

C. Conclusion

26. For the reasons set out above and in its May submissions, Hydro One meets the threshold test under Rule 43.01. WDI has failed to provide sufficient reasons why Hydro One fails to meet the threshold test under the Rules. The Original Panel made several errors that are ripe for review, which are not mere disagreements with the Panel's weighing of evidence or exercises of discretion. These errors, if corrected, could materially impact the outcome of the Original Panel's decision, and have materially harmed Hydro One. Further, a stay remains appropriate under the Rules.

27. Hydro One submits that its motion passes the threshold test and that the Motion should be considered on its merits by a different panel of Commissioners.

All of which is respectfully submitted this 17th day of June, 2026.

Jonathan Myers

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Torys LLP
Counsel to Hydro One Networks Inc.

[27] EB-2024-0078, Order for a Partial Stay, February 12, 2024.

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AND TO: All Intervenors in EB-2025-0254/EB-2026-0133